

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: (SUMMARY ORDER). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 19th day of September, two thousand and seven.

PRESENT:

HON. JOHN M. WALKER, JR.,
HON. GUIDO CALABRESI,
HON. ROBERT D. SACK,
Circuit Judges.

MING SHI CHEN,

Petitioner,

-V.-

No. 06-2688-ag

BOARD OF IMMIGRATION APPEALS.

Respondent.

1
2
3 Submitted for Petitioner: Gary J. Yerman, New York, N.Y.
4

5 Submitted for Respondent: Tammy Owens Combs, Assistant United States Attorney, *for*
6 James R. Dedrick, United States Attorney for the Eastern District
7 of Tennessee, Chattanooga, Tenn.
8

9
10 **UPON DUE CONSIDERATION** of this petition for review from a final administrative order of
11 the Board of Immigration Appeals (“BIA”), it is hereby **ORDERED, ADJUDGED, AND**
12 **DECREEED** that the petition for review is **DENIED**.
13

14
15 Petitioner Ming Shi Chen (“Chen” or “Petitioner”) appeals from a May 12, 2006 order of
16 the BIA, which affirmed without opinion the February 23, 2005 decision of Immigration Judge
17 (“IJ”) Brigitte LaForest denying Chen’s application for asylum, withholding of removal, and
18 relief under the Convention Against Torture (“CAT”). *In re Ming Shi Chen*, No. A 97 660 125
19 (B.I.A. May 12, 2006), *aff’g* No. A 97 660 125 (Immig. Ct. New York, N.Y. Feb. 23, 2005). We
20 assume the parties’ familiarity with the procedural history, facts, and relevant issues on appeal.

21 When, as here, the BIA summarily affirms the decision of the IJ without issuing an
22 opinion, *see* 8 C.F.R. § 1003.1(e)(4), we review the IJ’s decision as the final agency
23 determination. *Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005). We review the agency’s factual
24 findings under the substantial evidence standard. 8 U.S.C. § 1252(b)(4)(B); *Belortaja v.*
25 *Gonzales*, 484 F.3d 619, 623 (2d Cir. 2007). We review *de novo* questions of law and the
26 application of law to undisputed fact. *Secaida-Rosales v. INS*, 331 F.3d 297, 307 (2d. Cir. 2003).

27 Since Petitioner makes no arguments regarding his CAT claim, we treat that claim as
28 abandoned. *See Yueqing Zhang v. Gonzales*, 426 F.3d 540, 541 n.1, 545 n.7 (2d Cir. 2005). We
29 review only the IJ’s decision regarding Petitioner’s request for asylum and withholding of

1 removal. The IJ based that decision on two independent grounds: an adverse credibility
2 determination and a finding that Chen failed to establish past persecution or a well-founded fear
3 of future persecution. We have concerns about the IJ's credibility finding, which was based on a
4 Department of Homeland Security report that lacks many of the indicia of reliability we deemed
5 vital in *Zhen Nan Lin v. U.S. Dep't of Justice*, 459 F.3d 255, 270-71 (2d Cir. 2006). We need not
6 address that issue, however, because the IJ's alternative ground for her decision was entirely
7 appropriate. *See Cao He Lin v. U.S. Dep't of Justice*, 428 F.3d 391, 401 (2d Cir. 2005).

8 Chen's asylum claim is based on his status as the boyfriend of a woman who was
9 allegedly forced to have an abortion in China. But as we held in *Shi Liang Lin v. U.S. Dep't of*
10 *Justice*, Nos. 02-4611-ag, 02-4629-ag, 03-40837-ag, — F.3d —, 2007 WL 2032066, at *13 (2d
11 Cir. July 16, 2007) (en banc), boyfriends or fiancés of individuals who have been persecuted
12 under coercive family planning policies are not entitled to *per se* refugee status under 8 U.S.C.
13 section 1101(a)(42). While a boyfriend or fiancé may be eligible for relief based on his "other
14 resistance" to a coercive population control program, the fact that an individual's spouse or
15 partner has been forced to have an abortion "does not, on its own, constitute resistance to
16 coercive family planning policies." *See id.* at *13. We hold that Chen's application was
17 appropriately denied because that application rested primarily on the alleged abortion and
18 because the record does not come close to indicating any "other resistance" on Chen's part.

19 Since Chen was unable to establish his eligibility for asylum, he was also unable to meet
20 the higher standard required to succeed on a claim for withholding of removal. *See Wu Biao*
21 *Chen v. INS*, 344 F.3d 272, 275 (2d Cir. 2003).

22 We have reviewed all of Petitioner's arguments, and we find them without merit.

1 Accordingly, the petition for review is DENIED. Petitioner's motion for a stay of removal is also
2 DENIED.

3
4 FOR THE COURT:

5 Catherine O'Hagan Wolfe, Clerk of the Court
6

7 By: _____
8